SIG-WP-2026-09 —

# Intestacy & the Modern Household

intestacy · Administration of Estates Act 1925

*What the default rules actually do, who they no longer describe, and why the survivor of a thirty-year partnership can rank behind a first cousin*

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# § Abstract

When a person dies in England and Wales without a valid will, their estate is distributed under section 46 of the Administration of Estates Act 1925, as amended. The rules are commonly described as a safety net. They are better described as a specific distribution scheme, drafted around a specific household — married or civil-partnered, with children, property-simple — and applied without modification to every household that fails to opt out of it by making a will. The scheme is precise about that household: a surviving spouse or civil partner takes the personal chattels, a fixed net sum of £322,000, and half of anything beyond it, with the other half held for the children. It is equally precise, in the way silence is precise, about everyone else. A cohabiting partner takes nothing under the rules, at any duration of the relationship. A stepchild who was never adopted takes nothing. A spouse separated for twenty years, but never finally divorced, remains a spouse throughout: entitled to the full spousal share, and to the whole estate where the deceased left no issue.

This paper sets out the current rules exactly, including the parts that get compressed out of summaries: the statutory trusts, the 28-day survivorship condition, the order of relatives that runs from parents to half-blood uncles and aunts before arriving at the Crown, and the recent history of the fixed net sum — including the finding of a House of Lords committee that the 2023 increase was made months later than the statute required, at an identifiable cost to the families in between. It then measures the scheme's assumed household against the Office for National Statistics' count of actual ones, of which 3.5 million are cohabiting-couple families. The Inheritance (Provision for Family and Dependants) Act 1975 patches part of the gap, but by litigation rather than entitlement, and to a maintenance standard rather than a share. A Ministry of Justice consultation open as this paper is written proposes, for the second time in fifteen years, to change the position — this time with the Government stating it is minded to give qualifying cohabitants the same intestacy rights as spouses. Nothing has changed yet.

KEYWORDS *intestacy; Administration of Estates Act 1925; cohabitation; statutory legacy; fixed net sum; family provision; bona vacantia; England and Wales*

## DISCLOSURE NOTE

The author is the founder of Valoren, a household continuity and personal-governance platform being developed through Standard Index Group. This working paper is an independent description of the intestacy rules of England and Wales and of the reform proposals affecting them. No product, service, or commercial claim is evaluated in the paper, and the analysis is presented in method-neutral terms. The author has received no external research funding for this work. All views are the author's own. This paper is not legal advice. It is provided for research and informational purposes only.

## § 2 Introduction: the scheme nobody reads

There is a line that appears in nearly every guide to making a will: *if you do not make a will, the state makes one for you.* It is a serviceable warning and a poor description. What the state supplies on intestacy is not a will in any sense that matters. A will can appoint executors the testator chose and trusted; the intestacy rules leave administration to whoever ranks highest in a statutory list and is willing to act. A will can name guardians for children, make gifts to friends, skip a generation, fund a trust, leave the house to the person actually living in it. Section 46 of the Administration of Estates Act 1925 does none of these things, because it cannot: it has never met the deceased. It is not a will but a queue — a fixed order of categories of relative, drawn up in 1925 and amended at intervals since, into which every English and Welsh household without a will is slotted at the moment of death, whatever shape that household actually took.

The queue is also widely misbelieved out of existence. I have heard "common-law wife" said with complete confidence on building sites — the belief that enough years together ripen into a spouse's rights. No number of years does, and § 4 is about the households that belief lets down.

The queue is not badly designed for the household it was designed for. A married couple with children of that marriage, whose main asset is a jointly owned home, will often find that the rules produce roughly what the couple would have chosen — the survivor takes most or all, the children take the remainder or wait. The difficulty is arithmetic, and it is set out in § 6: the household the scheme describes is now one household type among several, and the households it does not describe include 3.5 million cohabiting-couple families to whom the rules allocate precisely nothing.

This paper does four things. § 3 states the current rules exactly, because loose summaries of intestacy are common and the details — the fixed net sum, the statutory trusts, the survivorship condition, the order of remoter kin — are where the practical consequences live. § 4 identifies who the rules ignore, and who they include by inertia. § 5 examines the 1975 Act, the claim-based mechanism that is standardly offered as the answer to § 4, and prices what "claim-based" means. §§ 6–7 measure the gap against the demographic record and the current state of reform, which as at July 2026 includes a live government consultation proposing intestacy rights for qualifying cohabitants — a proposal with a longer history than its press coverage suggests. The paper describes the scheme; it does not design its replacement.

The paper is confined to England and Wales. Scotland has a different scheme; Northern Ireland has its own legislation. Both are outside scope.

## § 3 The rules, precisely

## § 3.1 The spouse's entitlement where there are children

Where the intestate leaves both a surviving spouse or civil partner and issue — children, or the descendants of children who died first — section 46(1) distributes the residuary estate in three movements. The survivor takes the personal chattels absolutely. The survivor then takes a fixed net sum, currently £322,000, charged on the estate with interest running from the date of death. Whatever remains after the chattels and the fixed net sum is divided in half: one half to the survivor absolutely, the other half held on the statutory trusts for the issue.

Each element repays a closer look.

**Personal chattels** has been a defined term since 1925, but the definition was rewritten by the Inheritance and Trustees' Powers Act 2014 and is now brutally simple: tangible movable property, except money and securities for money, except property used at the death solely or mainly for business purposes, and except property held solely as an investment (s.55(1)(x), as substituted). The car, the furniture, the dog, and the wedding ring pass under this head. A painting bought purely as an investment does not, and somebody may one day have to prove which kind of painting it was.

**The fixed net sum** — the figure most summaries call the statutory legacy — is £322,000 for deaths on or after 26 July 2023 (SI 2023/758). It was £270,000 from February 2020 (SI 2020/33), £250,000 from February 2009 (SI 2009/135), and £125,000 from December 1993 until then (SI 1993/2906). The mechanism that updates it is worth understanding, because it recently failed in an instructive way. Schedule 1A to the 1925 Act, inserted in 2014, obliges the Lord Chancellor to make a new order within 21 days whenever the consumer prices index rises more than 15 per cent above its level at the last order. The index crossed that threshold with the November 2022 figure, published in December 2022. The Order was made at 10.50 a.m. on 5 July 2023 and came into force on 26 July 2023 — roughly six months after the statutory deadline. The House of Lords Secondary Legislation Scrutiny Committee recorded that the Ministry of Justice had breached the legislation it administers, and the Ministry's own revised explanatory memorandum eventually conceded it in terms: "There was a breach in the duty under the legislation". The practical meaning of the delay is not abstract, and it is worth stating carefully. A compliant order in January 2023, built on the November 2022 index, would have set the sum at £311,000; the July order, built on five further months of inflation, set it at £322,000; and because each order applies only to deaths after its own commencement, the spouse of a person who died in, say, May 2023 took £270,000 — some £41,000 less than the sum the statutory formula had already earned by the date of the death. And the interest on the sum is itself a small monument to statutory precision: it runs at the Bank of England rate that had effect *at the end of the day on which the intestate died* (s.46(1A)).

**The statutory trusts** (s.47) hold the children's half until each child reaches eighteen, or marries or forms a civil partnership under that age. A child who dies before the intestate leaving children of their own is represented by them, per stirpes: the grandchildren divide their parent's share. Two features of this deserve daylight. First, the children's entitlement is contingent — a sixteen-year-old whose parent dies intestate owns nothing yet, and if the child dies at seventeen unmarried, their share redistributes as though they had never existed. Second, the trust is a real trust, with trustees, investment duties, and a beneficiary who is the child, not the household. Households that would never have designed a trust acquire one by default.

### § 3.2 The spouse's entitlement where there are no children

Where the intestate leaves a spouse or civil partner and no issue, the survivor takes the entire estate absolutely. That has only been true since 1 October 2014. For deaths before that date, a childless intestate's estate above a threshold was shared between the spouse and the deceased's surviving parents or, failing them, whole-blood siblings — an arrangement that regularly astonished widowed spouses who discovered their in-laws held a stake in the estate. The 2014 Act ended it. The point earns its paragraph because it illustrates something structural: the intestacy rules feel permanent and are not. They are a policy instrument that gets adjusted roughly once a decade, and what "everyone knows" about them is frequently a memory of the previous version.

One condition attaches to everything in §§ 3.1 and 3.2: the survivor must live 28 days. Section 46(2A), inserted in 1995, provides that a spouse or civil partner who survives the intestate but dies within 28 days is treated as not having survived at all, so the estate is distributed as though the survivor predeceased. The provision exists to stop one estate pouring into a second estate and being administered twice in a month. It is sensible, mechanical, and — like most of this scheme — entirely unknown to the people it governs.

### § 3.3 Where there is no spouse: the queue proper

Where no spouse or civil partner survives (or none survives 28 days), section 46 works down a fixed order, each class taking absolutely and excluding every class below it: issue first, on the statutory trusts; then parents; then whole-blood siblings; then half-blood siblings; then grandparents; then whole-blood uncles and aunts; then half-blood uncles and aunts. Within the sibling and uncle-and-aunt classes, the statutory trusts again substitute the children of any member who died first — which is how first cousins come to inherit. The order is absolute in both directions: a living parent excludes every sibling, and a single surviving half-blood aunt excludes the Crown.

If the whole queue is empty, the estate is bona vacantia: it "shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall" (s.46(1)(vi)), depending on where the deceased lived, and is administered, in the Crown's case, by the Bona Vacantia Division of the Government Legal Department. The list ends, as English property lists tend to end, with the Crown.

There is one small door in the wall, and its location should be noted carefully now because § 4 returns to it. The Crown's published guidance allows a person outside the statutory classes to apply for a discretionary grant from a bona vacantia estate — the guidance's own examples are a person who *lived with* the deceased, or cared for them. Discretionary, unenforceable, and available only when the queue is empty: but it exists, and the fact that it exists is the government's own quiet acknowledgment of who the queue leaves out.

## § 4 Who the scheme ignores, and who it includes by inertia

## § 4.1 The cohabitant

The headline fact of this paper can be stated in one sentence: a cohabiting partner has no entitlement under the intestacy rules, and the duration of the cohabitation is irrelevant. Two years, ten, thirty — section 46 does not count them, because section 46 does not see them. The rules operate on formal status (marriage, civil partnership) and on blood or adoption; a shared life, a shared mortgage, and shared children establish standing nowhere in the section. Where the deceased also leaves no will, the surviving partner watches the estate pass to the deceased's children — including, in a blended household, children who may regard the survivor as an intruder in their inheritance — or, where there are no children, to parents, siblings, and outward along the queue of § 3.3.

The comparison the queue invites is stark enough to state plainly. If the deceased has any relative within the statutory classes — down to and including a half-blood aunt, or a first cousin standing in a dead aunt's place — that relative takes the estate in full, and the law offers the surviving partner nothing and no discretion to offer more. If the deceased has *no* relative in any class, so that the estate falls out of the bottom of section 46 to the Crown, the survivor's position actually improves: the Bona Vacantia Division may entertain a discretionary application from someone who lived with the deceased. The partner of thirty years therefore has better prospects against the Crown than against a first cousin the deceased never met. No one designed that outcome. It is what a scheme built on 1925 categories does when it meets a household the categories predate.

It should be said precisely: the survivor in these cases is not always left destitute, because jointly owned property passes by survivorship outside the estate, pension schemes exercise their own discretions, and § 5's claim mechanism exists. But each of those is an accident of asset titling or a remedy that must be fought for. None is an entitlement, and the difference between an entitlement and a remedy is measured in months, legal fees, and the requirement to litigate against one's dead partner's family while living in the disputed house.

The gap is, I think, the least defensible default in modern English succession law, and the view is held with some confidence because the institutions that examine it keep reaching the same conclusion while the statute stays put. The Law Commission recommended entitlement for qualifying cohabitants in 2011. The Government declined that recommendation — alone among the report's package — in 2013. A government consultation is open now, fourteen and a half years after the first recommendation was published, proposing substantially what was declined. § 7 sets out that history properly.

## § 4.2 The stepchild

"Issue" means children and their descendants, and by section 67 of the Adoption and Children Act 2002 an adopted person is treated in law as the child of the adopters and of no one else. The combined effect is clean in both directions: an adopted child inherits from the adoptive family exactly as a birth child would (and, subject to the Act's carve-out where the adopter is the child's own natural parent, no longer from the birth family), while a stepchild who was never adopted is not issue of the step-parent and takes nothing on the step-parent's intestacy. Length of the relationship is again irrelevant. A child raised from the age of two by a step-parent who never completed an adoption is, to section 46, a stranger. The 1975 Act sees them — a person "treated by the

deceased as a child of the family" may claim under s.1(1)(d) — but that is § 5's machinery, with § 5's costs. In a country where blended families are ordinary, the adoption formality carries an inheritance consequence that almost no one executing (or not executing) it has in mind.

### § 4.3 The separated spouse

Inertia cuts the other way too. Marriage ends, for intestacy purposes, at the final order of divorce and not before. A spouse who separated from the deceased twenty years ago, who has not shared a household or a bank account since, and whom the deceased had entirely omitted from every draft will they never signed, remains a spouse within section 46 and takes the full spousal entitlement. The single statutory exception is judicial separation, a proceeding most separating couples have never heard of: where a judicial separation order is in force and the separation is continuing, section 18(2) of the Matrimonial Causes Act 1973 provides that the intestate's property devolves as if the other spouse were dead. Informal separation, however long and however complete, has no such effect.

Set §§ 4.1 and 4.3 side by side and the scheme's logic shows itself. The partner who shared the deceased's life until the morning of the death takes nothing; the spouse who left in another decade remains inside the scheme, taking the full spousal entitlement and, where the deceased left no issue, everything. Both results follow from the same design decision — the certificate, not the household — and the design decision is the thing this paper is about.

## § 5 The 1975 Act: a remedy priced in litigation

The standard answer to § 4 is the Inheritance (Provision for Family and Dependants) Act 1975, and it is a real answer with a real price list.

Since 1996, a cohabitant has had standing to claim without proving financial dependency: s.1(1)(ba), inserted by the Law Reform (Succession) Act 1995, admits a person who, throughout the two years ending with the death, lived in the same household as the deceased and as if they were a married couple or civil partners (s.1(1A)). Stepchildren enter through s.1(1)(d) as persons treated as children of the family; anyone actually maintained by the deceased enters through s.1(1)(e). The court's powers, once a claim succeeds, are wide.

But three features keep the Act well short of a fix.

First, the standard. For every applicant except a surviving spouse or civil partner, "reasonable financial provision" means provision reasonable for the applicant *to receive for their maintenance* (s.1(2)(b)). The surviving cohabitant who wins does not step into the spouse's place in section 46's table; they receive what a court judges their upkeep requires. The spouse standard — provision reasonable in all the circumstances, maintenance or not — is expressly reserved for the married. The Act, in other words, reproduces in its remedial layer the same status line the intestacy rules draw in their distributive one; it softens the cliff-edge without moving it.

Second, the clock. An application must be brought within six months of the grant of representation, after which the court's permission is required (s.4). Six months is not a long time in the life of a bereaved person who must first discover that they have no entitlement, then find a solicitor, then decide to sue their partner's children.

Third, the posture. Everything under the 1975 Act is adversarial. The claim is made against the estate, which in practice means against the people the intestacy rules did benefit — frequently the deceased's children or siblings — with costs at risk, outcomes discretionary, and the family relationships that survive the death spent as ammunition. The Law Commission, recommending direct entitlement in 2011, treated exactly this as the reason a claim is not a substitute for a share: the survivors least equipped to litigate are the ones the current law obliges to.

None of this is a criticism of the Act, which does what a family-provision statute can do. It is a description of what it costs to route a predictable, recurring household situation through discretionary litigation instead of through the distribution rules. A scheme that requires the most ordinary case — the long-term partner in the shared home — to sue is a scheme making a statement about what it considers ordinary.

## § 6 The households that actually exist

The Office for National Statistics counted 19.9 million families in the UK in 2025. Of these, 13.0 million — 65.3 per cent — were married couples. Cohabiting couples accounted for 3.5 million families, 17.6 per cent of the total, up from 3.2 million (17.0 per cent) in 2015; lone parents accounted for a further 3.2 million, 16.0 per cent (ONS, *Families and Households in the UK: 2025*, released 17 April 2026, from the April–June 2025 Labour Force Survey).

The reader should do the alignment consciously, because it is the paper's hinge. The intestacy scheme's fully-described household — the one for which § 3.1's three movements were choreographed — is a subset of the 65.3 per cent. The 3.5 million cohabiting-couple families are not partially covered, or covered on conditions. For section 46's purposes they do not exist, and each of them is one unmade will away from the outcomes in § 4.1. More than one family in six is a demographic the scheme has simply never been amended to see. One of the 3.5 million is a household of friends of mine: thirty-seven years old, living together, and a will has never once come up.

As to how many of those households have made the will that would opt them out: this paper does not say, because it cannot. Figures for the proportion of UK adults without wills circulate freely — most trace to commercial surveys by will-writing firms and insurers, with unpublished methodology and an obvious interest in the answer — and no official statistic exists. The honest statement is that the population exposed to the intestacy rules is large, unmeasured, and includes every household in this section that has not deliberately contracted out.

## § 7 Reform: 2011, 2013, 2026

The proposal that cohabitants should inherit on intestacy is not new, and its history requires no embellishment beyond dates.

In December 2011 the Law Commission published *Intestacy and Family Provision Claims on Death* (Law Com No 331), the product of a three-year project. Its central recommendation on this point was that a person who had lived with the deceased as a spouse until the death should take *the same entitlement as a spouse* under the intestacy rules — provided the deceased was not married or in a civil partnership at the death, and provided the cohabitation had lasted five years, or two years where the couple had a child living with them (para 1.99). Knowing that the recommendation raised different political questions from the rest of its package, the Commission drafted two separate Bills: an Inheritance and Trustees' Powers Bill for the uncontroversial reforms, and a free-standing Inheritance (Cohabitants) Bill for this one.

The strategy half-worked, which is to say it worked exactly as its designers feared. In March 2013 the Government accepted the report's recommendations with minor amendments — except those relating to cohabitants. The first Bill became the Inheritance and Trustees' Powers Act 2014, which is why § 3 of this paper looks the way it does. The Inheritance (Cohabitants) Bill was never introduced. The reform that survived is the one that tidied the scheme; the reform that was severed and shelved is the one that would have changed who the scheme is for.

Thirteen years later the question has been reopened. On 5 June 2026 the Ministry of Justice opened *A Fairer End to Relationships*, a ten-week consultation that is open as I write and closes on 14 August 2026, covering financial remedies on divorce, financial provision for cohabitants on separation, and — directly relevant here — inheritance for cohabitants on death. On the question § 5 showed to be the live one — whether a qualifying cohabitant would take a spouse's entitlement or something more limited — the document goes further than its press coverage suggests. Having considered and rejected a "partial model" of narrower rights as harder to design and more likely to generate litigation, the Government states that it "is minded to adopt a clear and simple model under which qualifying cohabitants receive the same intestacy rights as spouses or civil partners", and asks consultees to confirm or oppose it (Question 43). That is the Law Commission's 2011 position, adopted as the Government's starting point after thirteen years of shelf life. The machinery around it is consciously unfinished: the document asks whether the minimum duration for childless couples should be less than, equal to, or more than the Commission's five years (Question 46), and whether couples with a shared child should face two years, more, or no minimum at all (Question 47) — the three-year test that headlines the consultation's separation framework belongs to that framework, not to intestacy, and for death the Government prefers a marriage-equivalence definition to the separation side's "enduring family relationship" test. Two consequential proposals travel with the package: removing the two-year qualifying period for 1975 Act claims where the surviving partner and the deceased had a child together (Question 48), and giving qualifying cohabitants a spouse's priority to take the grant of administration, so that the person who inherits is no longer barred from administering (Question 44). A "minded to" is not a decision, and none of it binds anyone.

The 2011 recommendation was itself a completed, drafted, ready-to-introduce Bill, and it has now waited long enough that this paper can describe its waiting as historical background; the field has a documented history of long pauses between recommendation and enactment, and a "minded to" has not yet shortened one. Nothing in the current consultation changes the law governing any death that occurs while it runs. As at July 2026 the

position remains exactly as §§ 3–5 describe it, and the only instrument by which a household can choose its own distribution remains a valid will — a physical, witnessed document, whose execution formalities are set out step by step in the companion note SIG-TN-2026-03, and which cannot yet be made electronically for the reasons the companion note SIG-TN-2026-04 explains. For a cohabiting household, the two documents in this series most worth reading are this one, for what happens by default, and that one, for what it takes to displace the default.

## § 8 Limitations

This paper describes the intestacy rules of England and Wales as they stand at 1 July 2026; a consultation with direct bearing on §§ 4–5 closes on 14 August 2026, and the paper's currency should be checked against events after that date. The description of the *A Fairer End to Relationships* proposals is a description of a consultation document, which binds no one and may be withdrawn, amended, or ignored.

The paper makes no empirical claim about the number of intestate deaths, the proportion of adults without wills, or the frequency with which the § 4 households experience the outcomes described; § 6 explains why no such figure is offered. The demographic figures are the ONS's, carry the ONS's methodology, and count UK families while the legal analysis is confined to England and Wales — a mismatch of coverage the reader should hold in mind, though it does not disturb the qualitative point; the UK figure is used as a scale indicator only, not as a jurisdiction-specific denominator. Scotland and Northern Ireland have their own intestacy regimes and are outside scope. Tax is outside scope. The treatment of jointly owned property, pension death benefits, and other non-estate assets in § 4.1 is deliberately summary; each is a paper in itself. One evaluative view is expressed (§ 4.1) and is the author's own; the paper otherwise describes the scheme and records the reform history without advocating a design.

This paper is not legal advice. It is provided for research and informational purposes only.

## § 9 Conclusion

The intestacy rules are a default distribution scheme with a definite shape: everything to the formal statuses — marriage, civil partnership, blood, adoption — in a fixed order, with a fixed sum and fixed trusts, applied identically to every household that has not made a will. For the household the scheme describes, it works tolerably. For the 3.5 million cohabiting-couple families it has never been amended to see, it works precisely as written, which is the problem: the partner takes nothing, the stepchild takes nothing, the long-estranged spouse keeps the spouse's whole entitlement, and the corrective machinery on offer is a maintenance claim with a six-month fuse, to be litigated against the grieving relatives who did inherit.

None of this is hidden. Every rule in this paper is in a public statute; the Law Commission mapped the gap fifteen years ago and drafted the fix; the Government's own bona vacantia guidance names the cohabitant and the carer as the people who might deserve a discretionary share of the estates nobody claims. The scheme's con-

tents are not a secret — they are merely unread, by almost everyone whose property they will one day distribute. Whether the consultation now open changes that is a question for a future version of this paper. What can be said today is unchanged from 1925: the scheme applies until the household writes its own, and the households the scheme serves worst are the ones with the most riding on writing it.

None of this is said from high ground. The author of this paper is thirty-seven and, at the date it bears, has no will — a fact in the course of being corrected, but a fact all the same.

Section 46 has never met your family. It will divide the house all the same.

# § 10 References

## § 10.1 Statutes and statutory instruments

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## § 10.3 Official statistics and guidance

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## § 10.4 Related papers in this series

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